[redacted]

File No. Legis 23 of 1910-11
Serial Nos. 1-4

1910-11

GENERAL AND REVENUE SECRETARIAT.

Judicial Branch
(Legislation)
Section

(28)

Part A: Manuscrip
for December 1910

Subject:-
Law, usage and judicial decisions in regard to the States Ownership of the beds of rivers in Mysore

Serial Nos.

1 Confl. D.O. letter No 6413 dated 24th Dec: 1910 from the Misl: Asst: to the Resident.
Calls for certain particulars about the ownership of the state in beds of rivers in the Mysore State.

2. D.O. letter No 15-H dated 1st Nov: 1910 to Mr. C.S. Doraisamy Iyer, Public Prosecutor
Calls for a note on the subject.

3. D.O. letter dated 6th Nov: 1910 from Mr. C.S. Doraisamy Iyer, Public Prosecutor
Submits a note as desired

4 D.O. No 1705 dated 10th Dec: 1910 to the Resident in Mysore
G. R. S. No.
Forwards a copy of the note drawn up on the subject by the Second Councillor.

G.R.S.11]

1940-11

GENERAL AND REVENUE SECRETARIAT

(Legis)

NOTES.

File No. 23-10

FILE HEADING.

~~Information asked for by the Residency~~ ~~as to the~~ law, usage and judicial decisions in regard to the States ownership of the beds of rivers in Mysore

12/12

From

No.	Dated	Received
Diary No.	Enclos.	Spare Copies	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

Notes—First sheet.

GPB—30,000—3-4-07

G. R. S. 12]
General and Revenue Secretariat.

Legis. File No. 23 of 1910-11

9 mis 37

Serial No.	
X1	From the First Asst Resident' Coml D.O letter No. 6413 & 24th Oct 10. Calls for certain particulars about the ownerships of the State in the beds of rivers in the Mysore State.
2 1	To Mr C.S. Doraiswamiyer, Public Prosecutor, Bangalore. (D.O letter No. 1514 & 1st Nov 10. Calls for a note on the subject
3 1	From Mr. C.S Doraiswamiyer. (D.O letter dated 6th Nov 10.) Submits a note as desired

1. Dewan's order.

To the Secretary for a draft reply to the Residency D.O letter. The question has been fully discussed by Mr. S. Narayan Rao, Govt Advocate, in connection with the Sivasamudram Jaghirdar's claim for a share in the profits derived from the Cauvery Electric Power Scheme. Mr C.S Doraiswamiyer's note is also perused upon. The

NOTE—Contn. sheet.

GPB—55,000—27-4-11

Serial No.

The draft may be submitted thro' the Second Cr.

8/11/10

Asstt Secy III.

2. Please get the file re the Siva Sammdram Jagir case (from Secy I) & put up a draft very early

C. J. Subramaniam 8/11/10

approved

8/11/10.

* this collection, viz L R 236-07 Ser 1 & 2 & June 08 was detached from this file & sent to Supdt for I on 12/12/10 as per this reqn for being sent to the Rev Com^r

C&R (10) 12/12/10

3. I have put up a draft on the lines of the Govt Advocate's opinion as ordered.

The main arguments are:—

(1) The Land Rev. Code decidedly settles the question in favour of the Govt. (vide Sec^s 36 & 37).

(2) Accretion to unalienated lands is primarily at the disposal of the Deputy Comm^r (vide Sec 62)

(3) The Dumbar have ceased

NOTE—Contn. sheet.

GPB—50.004—18-5-08

G. L. S. 12]
General and Revenue Secretariat.

Legis. File No. 23 of 1910-11

Serial No.

rights of ownership in certain instances (such as leasing out riverbeds in Shimoga and Kanara for growing melons during the hot weather. This is matter of common knowledge).

(4) The law as enacted in the Land Revenue Code is in harmony with the feelings and ideas of the people in Mysore with the "Common Law" of the country as understood in Mysore.

(5). The inexpediency and mischievous effects of holding that riverbeds are the property of the owners of the banks on either side of the river.

7/12/10. Sd

P. S. We are not concerned now with riverbeds in alienated villages. The Madras Govt only ask about Ryotwari holdings. It is considered unnecessary to refer to the right of the Govt under Common law to all waste land, as the Madras Govt propose to urge that Govt.

7/12/10 Sd

4

Vide p. 236 of Baden Powell's Land Systems of British India Vol I.

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 23 of 1910-11

Serial No.	
4	A draft D.o. reply to the Resident in Mysore. 7.A
	Devanhalli through 2nd C.T. Mysore 7/12/10
992	5. I have appended a note which I think may be copied and sent as a reply to the enquiry. H.V. Ranganathaya Second Councillor 8/12/10
4	D.O. letter No 1705-8 of 10th Dec 1910 to the Hon'ble the Resident in Mysore. Forwards a Copy of the note drawn up on the subject by Mr H.V. Ranganathaya. Second Councillor.

NOTE—Contn. sheet

GPB—50,000—12-8-10

Legis 23 of 1910-11

Submitted to His Highness.

Paper under disposal.

K.

I submit for information a confidential D.O. letter from the Residency, dated 24th October 1910, asking for information as to the law, usage and judicial decisions in regard to the State's ownership of the beds of rivers. The reply sent, enclosing a copy of a note drawn up by the Second Councillor, is also submitted.

16 Dec 1910

Legis 23 of 1910-11

7.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Information asked for by the Residency as to the law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

17.12.10.
1518

7.

Order.

~~KRW~~
21/12/10

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G. H. S. 12]
General and Revenue Secretariat.

Legis File No. 23 of 1910-11.

Serial No.

No. 2.0.1705/Enc.1. dated 10/12/10
To the Resident in Mysore
Forwards a copy of a note drawn on the subject
by the Second Committee.

~~Secon~~

Submitted

May this be recorded in B. now.
Instruction is also solicited as to
whether the abstracts of the letters
in the file may be entered in the
File Register or not.

(S.S.) I think this may be
17/6/11 recorded in A.

SW(11)
Registrar 19/6/11 This may be recorded in A.

19.6.11.

NOTE— Contn. sheet.

GPB—50,000—12-8-10

Original

CONFIDENTIAL.

1910-11.

FILE No. LEGIS. 23 OF 1910-11.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE DEPARTMENT

JUDICIAL AND LEGISLATIVE (LEGISLATION).

"A" Collection, Serial Nos. 1—4.

DECEMBER 1910.

Law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

TABLE OF CONTENTS.

Serial No. of File	Number and date of letter and contents	Reference	Page in Part A
1	Confidential D. O. letter No. 6413, dated 24th October 1910, from the First Assistant to the Resident. Calls for certain particulars about the ownership of the State in beds of rivers in the Mysore State.		1
2	D. O. letter No. 1514 dated 1st November 1910, to Mr. C. S. Doraswami Iyer, Public Prosecutor. Calls for a note on the subject.		1
3	D. O. letter dated 6th November 1910, from Mr. C. S. Doraswami Iyer, Public Prosecutor. Submits a note as desired.		1—4
4	D. O. No. 1705 dated 10th December 1910, to the Resident in Mysore. Forwards a copy of the note on the subject drawn up by the Second Councillor.		4—5

1910-11.

GENERAL AND REVENUE SECRETARIAT.

(LEGISLATION.)

FILE No. 23-10.

Law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

1. Confidential D. O. letter No. 6413, dated 24th October 1910, From the First Assistant Resident.

Calls for certain particulars about the ownership of the State in the beds of rivers in the Mysore State.

2. D. O. Letter No. 1514, dated 1st November 1910, to Mr. C. S. Doraswami Iyer, Public Prosecutor, Bangalore.

Calls for a note on the subject.

3. D. O. letter, dated 6th November 1910, from Mr. C. S. Doraswami Iyer.

Submits a note as desired.

1. Dewan's Order.

To the Secretary for a draft reply to the Residency D. O. letter. The question has been fully discussed by Mr. S. Narayan Rao, Government Advocate, in connection with the Sivasamudram Jahgirdar's claim for a share in the profits derived from the Cauvery Electric Power Scheme. Mr. C. S. Doraswami Iyer's note is also put up. The draft may be submitted through the Second Councillor.

T. GOVINDA RAO,
Private Secretary to Dewan.

8-11-10.

2. Assistant Secretary, Branch III. Please get the file regarding the Sivasamudram Jaghir case (from Branch I) and put up a draft very early.

C. S. BALASUNDARAM IYER,
(Officiating Secretary).

9-11-10.

3. I have put up a draft on the lines of the Government Advocate's opinion as ordered.

The main arguments are :—

(1) The land Revenue Code settles the question in favor of the Government (*vide* Sections 36 and 37).

(2) Accretion to unalienated lands is generally at the disposal of the Deputy Commissioner (*vide* Section 62).

(3) The Durbar have exercised rights of ownership in certain instances (such as leasing out river beds in Shimoga and Harihar for growing melons during the hot weather. This is matter of common knowledge).

(4) The law as enacted in the Land Revenue Code is in harmony with the feelings and ideas of the people; in other words, with the common law of the country as understood in Mysore.

(5) The inexpediency and mischievous effects of holding, in an agricultural country, that river beds are the property of the owners of the banks on either side of the river.

S. HIRIYANNAIYA.

7-12-10.

P. S.—We are not concerned now with river beds in alienated villages. The Madras Government only ask about Ryotwari holdings. It is considered unnecessary to refer to the right of the Government under *Common Law* to all waste land, *Vide* page 236, (Vol. I, of Baden-Powell's Land Systems of British India) as the Madras Government propose to urge.

S. H.
7-12-10.

4. A draft D. O. reply to the First Assistant Resident is put up.

C. S. BALASUNDARAM IYER.
7-12-10.

5. I have appended a note which I think may be copied and sent as a reply to the enquiry.

H. V. NANJUNDAYYA,
Second Councillor.
8-12-10.

4. D. O. No. 1705—En. I, dated 10th December 1910, to the Resident in Mysore.

Forwards a copy of a note on the subject drawn up by the Second Councillor.

Submitted to His Highness.

6. I submit for information a confidential D. O. letter from the Residency. dated 24th October 1910, asking for information as to the law, usage and judicial decisions in regard to the State's ownership of the beds of rivers. The reply sent, enclosing a copy of a note drawn up by the Second Councillor, is also submitted,

T. ANANDA RAO.
16-12-10.

Order.

K. R. W.
21-12-10.

CONFIDENTIAL.

Proceedings of the Government of His Highness the Maharaja of Mysore.

Law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

FILE No. 23 OF 1910-11.

D. O. No. 6413, dated the 24th October 1910, from Mr. P. B. Warburton, First Assistant to the Hon'ble the Resident in Mysore, to Mr. T. Ananda Rao, B.A., C.I.E., Dewan.

Serial No. 1.

In litigation now in progress in the Madras Presidency the question has been raised as to the basis on which the State's ownership of the beds of rivers rests, and it is proposed to plead that it rests upon the common law of India which vests all waste land in the State. This contention would be assisted if it could be shown that in neighbouring Native States such as Mysore, the State does, in fact, exercise rights of ownership over the beds of rivers, as, for instance, by granting licenses for gold-dredging therein or by levying assessment on accretions. The matter is of very considerable interest and importance to the Government of Madras, and at their instance, I am to enquire what the actual position is in Mysore-statutory law, usage, and judicial decisions, if any. There is, in the opinion of the Madras Government, a risk lest, by the illegitimate extension of the principle of the law of riparian proprietorship, the Courts may be led to recognize ownership of the beds of rivers as vesting in ryotwari holders of land, although these holders are properly entitled to nothing which is not included within their pattas. His Excellency in Council thinks that the Durbar will be ready to give such assistance as may be possible to prevent such a result which must be detrimental to all Governments alike, and I am therefore to request that any information which the Durbar can furnish may be forwarded confidentially to this Residency, as early as practicable, for communication to the Government of Madras.

D. O. No. 1514—En. 1 dated 1st November 1910, from Mr. T. Govinda Row, Private Secretary to Dewan, to Mr. C. S. Doraswami Iyer, B.A., B.L., Public Prosecutor, Bangalore Division.

Serial No. 2.

I am directed to enclose for your perusal and kind return copy of a D. O. (urgent and confidential) No. 6413, dated 24th October received from the First Assistant to the Hon'ble the Resident about State rights in beds of rivers. Kindly let me have your opinion in the matter. Although this is not a portion of your legitimate duties, the Dewan will be personally glad to have a note on the subject from your pen.

D. O. No. F. 1687—Legis. 23 of 1910-11, dated Bangalore, 6th November 1910, from Mr. Doraswami Iyer, to Mr. Govinda Rao.

Serial No. 3.

In continuation of my D. O. of the 4th instant, I am sending herewith a short note about State rights in beds of rivers in the Mysore State. I shall feel highly gratified if the Dewan will find it of some use to him, however small it may be. I am returning herewith the copy of the D. O, sent to me.

(*Enclosure to the above.*)

MEMO.

MYSORE STATE OWNERSHIP OF BEDS OF RIVERS.

The questions for consideration are :—

(1) In whom does the ownership of the beds of rivers rest, and

(2) What is the basis of such ownership.

Whatever doubts and difficulties there may be in the Madras Presidency for the solution of these questions, so far as the Mysore State is concerned, the matter is simple and easy of solution. Certain sections of the Land Revenue Code (Regulation IV of 1888) in force in the Mysore State deal directly and incidentally with the above points.

Statutory law.

Section 36, Land Revenue Code.

To start with Section 36 lays down that—

all beds of rivers, streams, nalas and all canals and water courses, and all standing and flowing water, and all lands wherever situated

are and are hereby declared to be the property of Government; and it shall be lawful for the Deputy Commissioner to dispose of them in such manner as may be authorized by Government."

Section 37, Land Revenue Code.

Section 37 provides that—

"* when it is proved * * that * * the bed of any river stream, nala, tank or canal the property of Government has been encroached upon by any person, the Deputy Commissioner may take possession of the part encroached upon * *"

Section 36 also declares that Government has no right to the beds of rivers and streams which are the property of individuals or of aggregates of persons legally capable of holding property."

Section 50, Municipal Regulation, cl. (2), Sub-Section (*b*).

2. In places where the New Municipal Regulation is in force there may be streams and rivers and the question may arise as to whether the Municipality is the owner of the rivers and streams or the Government itself. Section 50 of the Municipal Regulation, clause (2) Sub-section (*b*), declares that all public streams not specially reserved by Government shall be vested in and belong to the Municipal Council and if the expression "all public streams" does not include "beds of streams," Government may transfer the same under clause (*c*) of Section 50.

Section 50, clause (*c*) Municipal Regulation.

Government Notification Ft. No. 165-04-8, dated 17th March 1909.

3. By way of analogy reference may also be made to the Government Notification in the Forest Department dated 17th March 1909, Forest No. 165-04-8, para 5, from which the following is extracted for ready reference:—

"Save with the written permission of the Deputy Commissioner or other officer duly empowered, no tree, shrub, or bamboo shall be cut or burnt; nor shall any grass or other forest produce be burnt within 50 yards of the banks of a perennial hill stream or its feeder."

4. Rules framed under the Land Revenue Code, Section 233, are of great help in this connection.

Rule 15, Land Revenue Rules.

Rule 15.—Enacts that—"On lands in the beds of rivers used for growing melons, vegetables or crops of any kind, such temporary assessment shall be payable * * provided that any rates existing according to the custom of the villages or neighbourhood shall not be revised except for special reasons. The tenure in such cases should be annual.

Rule 19, Land Revenue Rules.

Rule 19.—"Any person * * may remove earth, * * * from the beds of rivers, for his own *bona fide* domestic or agricultural purpose * * *."

Rule 20, Land Revenue Rules.

Rule 20.—"Local Funds, Public Works * * * subject to the payment of such royalty as may be prescribed by Government * * remove earth, etc. * * from beds of rivers * * *

Common Law.

5. According to the common law obtaining in Mysore all waste lands belong to Government. At the time of survey and settlement the beds of rivers are measured and classified as "kharab" or 'unassessed waste' and are not included in the holding of any occupants. Unless by statute this right which Government possesses is vested by transfer in any person or body of persons, the right continues in Government, and this is exactly what is declared in Section 36, Land Revenue Code, wherein it is provided that "all lands wherever situated which are not the property of individuals or of aggregates of individuals legally capable of holding property * * except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be the property of Government." In other words, waste lands (which includes beds of rivers) are lands which are at the disposal of Government. "Lands at the disposal of Government" has been correctly defined in the Forest Regulation, XI of 1900, Section 2, clause (9).

Reg. XI of 1900, Section 2, clause (9).

Law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

"Land at the disposal of Government" means land in respect of which no person has acquired—

(*a*) a permanent, heritable and transferable right of use and occupancy under any law for the time being in force; or

(*b*) any right created by grant or lease made or continued by or on behalf of Government.

[This definition may be taken into consideration as a guide for interpretation, although it is taken not from the Land Revenue Code, but from the Forest Regulation.]

6. By long usage the beds of rivers have been leased to vegetable and melon growers in the Mysore State, and it is understood that this practice has been in existence for many many years past. In the Shimoga Town, when the Tungabhadra river is not in floods, the dry portions in the bed of the river are to this day being leased to vegetable and melon growers.

Usage.

7. *Accretions, alluvion and diluvion.*—The provisions of the Land Revenue Code on this subject are contained in the following section:—

Accretions.

46. All alluvial lands, newly formed islands or abandoned river beds, which vest, under any law for the time being in force, in any holder of alienated land shall be subject in respect of the liability to the payment of land revenue * * * as the original holding in virtue of which such lands, islands or river beds so vest in the said holder; but no revenue shall be leviable in respect of any such lands, islands or river beds, until or unless the area of the same exceeds half an acre, and also exceeds one-tenth of the area of the said original holding.

Section 46, Land Revenue Code.

"61. When it appears to the Deputy Commissioner * * that the occupancy of any land which vests, under any law for the time being in force, in Government, * * may be disposed of * * he shall offer the prior right of occupancy thereof to the occupant, if any, of the bank or shore on which such alluvial land has formed.

Section 61, Land Revenue Code.

* * * *

"62. When the alluvial land forms on any bank or shore the occupant, if any, of such bank or shore shall be entitled to the temporary use and occupation thereof unless or until the area of the same exceeds half an acre and also exceeds one-tenth of the area of his holding.

Section 62, Land Revenue Code.

"Rule 63 (*b*) of the rules framed under Section 233 of the Land Revenue Code prescribes that "newly formed alluvial lands, and abandoned river beds, to which the provisions of Sections 46 and 62 of the Land Revenue Code do not apply, may be disposed of by the Deputy Commissioner, under the rules and orders applicable to unoccupied unassessed land belonging to Government."

Rule 63 (*b*), Land Revenue Code.

N.B. 8.—The above sections and rules deal with the question of accretions, Section 46 dealing with alluvial accretions that vest, *under any law for the time being in force*, in any holder of any alienated land and Section 61 dealing with the occupancy of alluvial land which vests *under any law for the time being in force in Government*. On the former, Government have the right to levy revenue provided it exceeds the prescribed area, the occupancy remaining with the occupant of the alienated holding in whom it vests; whereas on the latter the Government have got the right of disposal subject to the conditions laid down in Section 61. After disposal, the Government has the right to levy land revenue under Section 46 of the Land Revenue Code.

But Section 46 deals only with the liability of alluvial accretion to the payment of land revenue. It is silent as to under what circumstances such accretion vests in the occupant of alienated holding and under what circumstances it vests in Government. On the question of right, therefore, "the law for the time being in force" must be resorted to.

9. There being no statutory provision on the subject of the ownership of such alluvial accretions, we must look to the common law of the country for solution. (This point being foreign to the scope on which reference is made by the Madras Government, it is not pursued further.)

Judicial decisions.

10. There are no judicial decisions, so far as I have been able to see, on the question of the ownership of the beds of rivers in the Mysore State.

11. *Summary.*—Both by the common law of the country and the statutory law, the State is the owner of the soil in the river beds. If any person claims that he is the owner, the burden of proof lies on him and he shall have to establish his title either by grant or by adverse possession over the statutory period. In virtue of the ownership of Government over the beds of rivers, Government has got the right to lease the same for vegetable and melon growers. It has further the right to transfer the ownership to Municipalities and the Municipal Regulation also provides for the same. Even in the Forest Regulation the right of Government over jungle streams is declared by providing for the prevention of certain acts being done within 50 yards of the banks of such streams. The contention which the raiyats holding adjoining lands may raise as to their ownership of the beds of rivers by a logical extension of the principle of riparian proprietorship, cannot validly and successfully be raised in the Mysore State.

C. S. DORASWAMI IYER,

5-11-1910.

D. O. No. 1705, dated Bangalore, 10th December 1910, from the Dewan to the Resident, Hon'ble Colonel Hugh Daly, C.S.I., C.I.E.

Serial No. 4.

With reference to Mr. Warburton's D. O. Letter No. 6413, dated 24th October 1910, calling for certain information in regard to the ownership of the beds of rivers in the Mysore State, I beg to forward herewith a note drawn up by the Second Councillor, Mr. H. V. Nanjundayya, M.A., M.L., which I trust will be found sufficient for your purpose. I may add that I entirely concur in the position therein taken.

NOTE.

Drawn up by Mr. H. V. Nanjundayya, M.A., M.L., Second Councillor, Mysore Government, re *the State's ownership of the beds of rivers in Mysore.*

The State's ownership of beds of rivers has never been doubted or questioned in the State of Mysore. There is accordingly no judicial decision available on the matter.

At the Survey Settlement, all river beds are carefully separated from holding and demarcated as kharab lands, *i.e.*, lands incapable of being occupied for cultivation. There is not a single instance in which the occupancy in such lands has been granted to individuals. The practice was the same before the Survey Settlement. So far as unalienated lands and villages are concerned, it is impossible to contend in Mysore that any ownership of individuals or bodies of individuals can be established over beds of rivers. Even in the case of small natural water courses included within the boundaries of fields, the spaces taken up by them are regarded under the Revenue Rules as phut kharab and cannot be ploughed up or cultivated by the occupant.

It is not clear whether there is in force in the Madras Presidency any such positive rule of law as is contained in Section 36 of the Mysore Revenue Code. If there is, it is inconceivable how any court can be led to recognise ownership of beds of rivers as vesting in raiyatwari holders of lands. It is very probable that the rule of riparian ownership arose both in Roman law (where it is originally found) and in the English and other system, on account of the absence of a rule therein investing the State with the ownership of all unappropriated lands. It cannot, with any show of reason, be contended in India where the right of the Sovereign has long been established on this basis, that any private party can succeed in making out his title to beds of rivers, and other such tracts of land which are by their very nature meant for the use of the public, without producing an express grant from the State.

Law, usage and judicial decisions in regard to the State's ownership of the beds of rivers in Mysore.

It is also quite without dispute that in Mysore, only the Government and no other person, has been exercising any acts of ownership over the beds of rivers. Rights of fishing are sometimes sold and sometimes let to be used free; but there is no case in which a riparian owner has ever thought of laying claim to them. In some places such as Shimoga and Seringapatam, dry parts of river beds are leased out temporarily to gardeners for growing melons but they are never given out on regular occupancy tenure.

No gold dredging or other similar operations are practised anywhere in this State.

Cases of alluvion and diluvion rarely occur in this State. The rules applicable to them are contained in Sections 46, 61, 62 and and 63 of the Mysore Revenue Code.

Thus there is no doubt whatever about the exclusive right of the State to river beds both by the common law (*i.e.*, immemorial recognised usage) and the Statute law of the State, where the question is between the Government and occupants of lands in Government villages.

In the case of the inam villages of Sivasamudram, the Jahgirdar put forward a claim recently to ownership in the bed of the Cauvery river and to the water flowing thereon based on rules of law recognised in England but this Government refused to recognise it. Where, in the grants of inam villages, a river is given as the boundary of the village, it is understood here that the whole of the river bed is excluded, and that the grantee cannot claim anything but the ordinary use of the flowing water for irrigation and other ordinary uses. It is only in the case of inam villages which include a part of the course of a river within their boundaries, that the right of the owner of the village can be recognised to extend to the soil on which the river flows. But even in such cases, the inamdar will be restrained from interfering with the free flow or purity of the water under the rules of common law.

If the law of Madras should be found to be different in this respect from that sketched here as the law in this State, it seems to be worth consideration whether in the public interests it should not be altered by statute.

Prayag Reading

(Opt) Law, usage and judicial decisions in regard to the States ownership of the beds of rivers in Mysore.

(Opt) File No. 23 of 1910-11

Confidential

D.O. No. 1164/12 dated 14th October 1910 from A.C. Pollock, Esq., I.C.S., Secretary to the Government of Madras, to C. Hayavadana Rao, Esq., Dewan Peishkar of Mysore.

Urgent & Confidential

D. O. No. 2/1630

THE RESIDENT MYSORE

BANGALORE.

24th October 1910.

Dear Sir

In litigation now in progress in the Madras Presidency the question has been raised on the basis on which the State's ownership of the beds of rivers rests, and it is proposed to plead that it rests upon the common law of India which vests all waste land in the State. This contention would be assisted if it could be shown that in neighbouring Native States such as Mysore, the State does, in fact, exercise rights of ownership over the beds of rivers, as, for instance, by granting licenses for gold-dredging therein or by levying assessment on accretions. The matter is of very considerable interest and importance to the Government of Madras, and at their instance, I am to enquire what the actual position is in Mysore - statutory law, usage, and judicial decisions, if any. There is, in the opinion of the Madras Government, a risk lest, by the illegitimate extension of the principle of the law of riparian proprietorship, the Courts may be led to recognize ownership of the beds of rivers as vesting in ryotwari holders of land, although these

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(R.S. 26)

3 pages File No. 23-10

~~Serial No. 2~~

Diary No. of letter replied to

D. O. No. 1514/Eu/1 dated Mysore 1st Nov 10.

From Mr F. Fawcett Asst Secy to Govt

To Mr C.S. Duraiswamy Esq B.A.B.L. Public Prosecutor Bangalore

~~Bangalore~~

General and Revenue Secretariat

( )

, the 190

Date of issue

Signed by

I am directed to enclose for your perusal copy of a D.O. (urgent & Confl) No. 6413 of 24th ult. addressed from the Govt Asst Secy about Salmon rights in beds of rivers. Kindly let us have your opinion in the matter. Although this is such a portion of your legitimate duties, the Dewan will be personally glad for to have a note on the subject from you - Yours sincerely

Draft by FFD

over.

SUBJECT.

C.S. Duraiswamy Esq
Public Prosecutor
Bangalore

P.S. The Enclosed Copy of this letter may be returned duly when done with by you

Confidential.

D.O. Encl 1

D. O. No. Fr 1687
Legis 23 of 1910-11

4

Bangalore
6. 11. 1910

From Mr Donaldson to Lt Col Pinhey

My dear Sir,

In continuation of my D.O. of the 4th inst I am sending herewith a short note about State rights in beds of rivers in the Mysore State. I shall feel highly gratified if the Dewan will find it of some use to him however small it may be. I am returning herewith the copy of the D.O. sent to me.

Yours sincerely
Secretary to Govt
Pub: Wks

To Govinda Rau Esq
Private Secy to the Dewan.

* not in the file.

Memo (Enclosure to Mr. Lloyd) 5

Mysore State - Ownership of Beds of rivers

The questions for Consideration are: —

(1) In whom does the ownership of the beds of rivers rest, and

(2) what is the basis of such ownership

Whatever doubts and difficulties there may be in the Madras Presidency for the solution of these questions so far as the Mysore State is concerned the matter is simple & easy of solution. Certain Sections of the Land Revenue Code (Reg IV of 1888) in force in the Mysore state deal directly and incidentally with the above points. To

Statutory Law.

§36. L.R. Code.

start with Sec 36 lays down that: —

"× × all beds of rivers, streams, nalas × × and all Canals and watercourses, and all standing and flowing water, and all lands wherever situated × × × are and are hereby declared to be the property of Govt.;" but it shall be lawful for the Dy. Comr. to dispose of them in such manner as may be authorised by Govt.".

§37. L.R. Code.

Sec 37 provides that

"× when it is proved × × × that × × × the bed of any river stream, nala, tank or Canal the property of Govt. has been encroached upon by any person the Dy. Comr. may take possession of the part encroached upon × × × "

Sec 36 also declares that Govt. has no right to the beds of rivers & streams which are the property of individuals

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or of aggregate of persons legally capable of holding property.

2. In places where the new Municipal Regulation is in force there may be streams & rivers & the question may arise as to whether the Municipality is the owner of the rivers & streams or the Govt. itself - Sec 50 of the Municipal Regulation cl (2) ~~of~~ Subsec (6) declares that all public streams not specially reserved by Govt. shall be vested in & belong to the municipal Council & if the expression "all public streams does not include "beds of streams" Govt. may transfer the same under cl (e) of Sec 50 -

§ 50 - Municipal Regulation - cl (2) Sub § (6).

§ 50 . cl (e) Mun: Reg.

3. By way of analogy reference may also be made to the Govt. Notification in the ~~Forest Dept~~ dated 17. 3. 1909 Forest no 165 - 04 - 8 - ~~See~~ para 5 from which the following is extracted for ready reference -

Govt. Notification No 165 - 04 - 8 dated 17. 3. 1909

"Save with the written permission of the D.C. or other officer duly empowered no tree, shrub, or bamboo shall be cut or burnt, nor shall any grass or other forest produce be burnt within 50 yards of the banks of a perennial hill stream or its feeder".

4. Rules framed under the Land Revenue Code Sec 233 are of great help in this Connection

Rule 15. Enacts that

"on lands in the beds of rivers used for growing melons vegetables or crops of any kind Such temporary assessment shall be payable × × provided that any rate Existing according to the Custom of the villages or neighbourhood shall not be revised except for special reasons – The tenure in Such Cases should be annual –

Rule 15. Land Rev: Rule.

Rule 19. "Any person × × may remove Earth × × × from the beds of rivers for his own bona fide Domestic or agricultural purpose × × ×" –

Rule 19: Do.

Rule 20. – "Local Funds, Public works × × × Subject to the payment of Such royalty as may be prescribed by Govt × × remove Earth &c × × from beds of rivers × × ×

Rule 20 - do.

Common Law

5. According to the Common law obtaining in Mysore all waste lands belong to Govt. At the time of Survey & Settlement the beds of rivers are measured & classified as "Kharab" or 'unassessed waste' & are not included in the holding of any occupant ~~of adjoining~~ ~~any right~~. Unless by statute this right which Govt possesses is vested by transfer in any person or body of persons, the right Continues in Govt, and this is Exactly what is declared in Sec 86 Land Rev: Code wherein it is provided that "all lands wherever Situated which are not the property of individuals or of aggregate of individuals legally Capable of holding property: × × Except as may be otherwise

provided in any law for the time being in force are and are hereby declared to be the property of Govt." In other words waste lands (which include beds of rivers) are lands which are at the disposal of government. "Lands at the disposal of Govt" has been correctly defined in the Forest Regulation XI of 1900 Sec 2 cl (9) —: Reg. XI of 1900. § 2 cl (9)

"Land at the disposal of govt means land in respect of which no person has acquired —

(a) a permanent heritable & transferable right of use and occupancy under any law for the time being in force; or

(b) any right created by grant or lease made or continued by or on behalf of Govt. —

[This definition may be taken into consideration as a guide for interpretation, although it is taken not from the Land Revenue Code but from the Forest Regulation].

Usage

6. By long usage the beds of rivers have been leased to vegetable & melon growers in the Mysore State, and it is understood that this practice has been in existence for many many years past. In the Shimoga Town when the Tungabhadra river is not in floods the dry portions in the bed of the river are to this day being leased to vegetable & melon growers.

Accretions.

7. Accretions, alluvion ~~& Diluvion~~ =

The provisions of the Land Revenue Code on this subject are contained in the following Sections : —

§ 46. L.R. Code.

§ 46. All alluvial lands, newly formed islands or abandoned river beds which vest under any law for the time being in force, in any holder of alienated land shall be subject in respect of the liability to the payment of land revenue × × × as the original holding in virtue of which such lands, islands or river beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands or river beds, until or unless the area of the same exceeds one half an acre, and also exceeds one tenth of the area of the said original holding.

§ 61. L.R. Code

§ 61.- " when it appears (× × to the D.C. Com") that the occupancy of any land which vests under any law for the time being in force, in government, × × may be disposed of × × he shall offer the prior right of occupancy thereof to the occupant if any of the bank or shore on which such alluvial land has formed -

× × × ×

§62. When the alluvial land forms on any bank or shore the occupant of any such bank or shore shall be entitled to the temporary use & occupation thereof, unless or until the area of the same exceeds half an acre & and also exceeds one tenth of the area of his holding

§62. L. R. Code.

× × ×

Rule 63 (b) of the rules framed under Sec 233 of the Land Rev: Code prescribes that "newly formed alluvial lands, and abandoned river beds, to which the provisions of Sec. 46 and 62 of the Land Rev: Code do not apply may be disposed of by the ~~Govt.~~ D^t Coll^r. under the rules & orders applicable to unoccupied unassessed land belonging to Govt."

Rule 63(6). Land Rev: Rules.

N.B. The above ~~are~~ Sections & rules deal with the question of accretions, § 46 dealing with alluvial accretions that vest, under any law for the time being in force, in any holder of any alienated land, and § 62 dealing with the occupancy of alluvial land which vests under any law for the time being in force in Govt. - On the former Govt have the right to levy revenue provided it exceeds the prescribed area

the occupancy remaining with the occupant of the ~~above~~ alienated holding in whom it vests; whereas on the latter the Govt. have for the right of disposal. ~~to~~ Subject to the Conditions laid down in § 61. After disposal the Govt. has the right to levy land revenue under Sec 46 of the L.R. Code -

But §46 deals only with the liability of alluvial accretion to the payment of land revenue - It is silent as to under what circumstances such accretion vests in the occupant of alienated holding and what circumstances it vests in Govt. - On the question of right therefore "the law for the time being in force" must ~~not~~ be resorted to.

9. There being no Statutory provision on the Subject of the ownership of such alluvial accretions we must look to the Common law of the Country for Solution - [This point being foreign to the Scope on which reference is made by the Madras Govt. ~~the Subject~~ this not pursued further] -

Judicial decisions 10. There are no judicial decisions so far as I have been able to see, on the question of the ownership of the beds of rivers in the Mysore State.

Summary 11 Summary

Both by the Common law of the

Coorg and the Statutory land, the State is the owner of the soil in the river beds. If any person ~~or persons~~ claiming that he ~~or they~~ is the owner, the burden of proof lies on him & he shall have to establish his title either by grant or by adverse possession over the Statutory period. In virtue of the ownership of Govt over the beds of rivers, Govt has got the right to lease the same for vegetable & melon growers. It has further the right to transfer the ownership to Municipalities & the Municipal Regulation also provides for the same. Even in the Forest Regulation the right of Govt over Jungle Streams is declared by providing for the preventing of certain acts being done within 50 yards of the banks of such Streams. The contention which the ryots holding adjoining lands may raise as to their ownership of the beds of ~~rivers~~ rivers by a logical Extension of the principle of riparian proprietorship cannot validly & successfully be raised in the Mysore State.

C Doraswamy Iyer
5. 11. 1910

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G.R.S. 26]

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Confidential. File No 23-10

~~Serial No. 4~~

Diary No. of letter replied to

D. O. No. 1705/Eu/ dated Bangalore 10 Dec 10.
No.
from the Secretary to Govt. Home Dept
~~Judl~~ Pol & Secy
~~Dep~~ dated

General and Revenue Secretariat

( )

, *the* 190 .

Date of issue

Signed by

With reference to M.r Warburton's D O letter No. 6413 dated 24th Octo calling for certain information in regard to the ownership of the beds of rivers in the Mysore State, I beg to forward herewith a note drawn up by the Second Councillor, M.r H. V. Nanjundayya M A, M L, which I trust will be found sufficient for your purpose. I may add that I entirely concur in the position therein taken over.

SUBJECT.

taken. M

Yours Sincerely

Draft

Dy (Dewan)
18/2/10

To,

The Honble
Col H. Daly CSI. CIE
Resident in Mysore
Bangalore

List of enclosures.

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Examined by

MGCPB—30,000—16-2-05

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N O T E

drawn up by Mr. H.V. Nanjundayya M.A., M.L., Second Councillor, Mysore Government, re the State's ownership of the beds of rivers in Mysore.

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The State's ownership of beds of rivers has never been doubted or questioned in the State of Mysore. There is accordingly no judicial decision available on the matter.

At the Survey Settlement, all river beds are carefully separated from holdings and demarcated as Kharab lands, i.e. lands incapable of being occupied for cultivation. There is not a single instance in which the occupancy in such lands has been granted to individuals. The practice was the same before the Survey Settlement. So far as unalienated lands and villages are concerned, it is impossible to contend in Mysore that any ownership of individuals or bodies of individuals can be established over beds of rivers. Even in the case of small natural water courses included within the boundaries of fields, the spaces taken up by them are regarded under the Revenue Rules as Phut Kharab and cannot be ploughed up or cultivated by the occupant.

It is not clear whether there is in force in the Madras Presidency any such positive rule of law as is contained in Section 36 of the Mysore Revenue Code. If there is, it is inconceivable how any Court can be led to recognise ownership of beds of rivers as vesting in raiyatwari holders of lands. It is very probable

that the rule of riparian ownership arose both in Roman law (where it is originally found) and in the English and other systems, on account of the absence of a rule therein investing the State with the ownership of all unappropriated lands. It cannot, with any show of reason, be contended in India where the right of the Sovereign has long been established on this basis, that any private party can succeed in making out his title to beds of rivers, and other such tracts of land which are by their very nature meant for the use of the Public, without producing an express grant from the State.

16(a) It is also quite without dispute that in Mysore, only the Government and no other person, has been exercising any acts of ownership over the beds of rivers. Rights of fishing are some times sold and some times let to be used free; but there is no case in which a riparian owner has ever thought of laying claim to them. In some places such as Shimoga and Seringapatam, dry parts of river beds are leased out temporarily to gardeners for growing melons but they are never given out on regular occupancy tenure.

No gold dredging or other similar operations are practised any where in this State.

Cases of alluvion and diluvion rarely occur in this State. The rules applicable to them are contained in Sections 46, 61, 62 and 63 of the Mysore Revenue Code.

Thus there is no doubt whatever about the exclusive right of the State to river beds both by the common law (i.e. immemorial recognised usage) and

the Statute law of the State, where the question is between the Government and occupants of lands in Government villages.

In the case of the inam villages of Sivasamudram, the Jahgirdar put forward a claim recently to ownership in the bed of the Cauvery river and to the water flowing thereon based on rules of law recognised in England, but this Government refused to recognise it. Where in the grants of inam villages, a river is given as the boundary of the village, it is understood here that the whole of the river bed is excluded, and that the grantee cannot claim anything but the ordinary use of the flowing water for irrigation and other ordinary uses. It is only in the case of inam villages which include a part of the course of a river within their boundaries, that the right of the owner of the village can be recognised to extend to the soil on which the river flows. But even in such cases, the inamdar will be restrained from interfering with the free flow or purity of the water under the rules of Common law.

If the law of Madras should be found to be different in this respect from that sketched here as the law in this State, it seems to be worth consideration whether in the Public interests it should not be altered by statute.

"Copy"

C.R. 10/12/10